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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

RYAN COX, individually, and for all
others similarly situated,

Plaintiffs,

-against-

**COINMARKETCAP OPCO, LLC;
BINANCE CAPITAL MANAGEMENT
CO., LTD. D/B/A/ BINANCE AND
BINANCE.COM; BAM TRADING
SERVICES INC. D/B/A BINANCE.US;
CHANGPENG ZHAO; CATHERINE
COLEY; YI HE; TED LIN; and DOES I-
X;**

Defendants.

Case No. 3:21-cv-08197-SMB

**PLAINTIFF'S RESPONSE TO
MOTION TO DISMISS BY
DEFENDANT BAM TRADING
SERVICES INC. D/B/A
BINANCE.US**

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Fed. R. Civ. P. 12(b)(6) 7

Pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(2) and (6), Plaintiff Ryan Cox (“Cox”), individually, and for all others similarly situated (the “Class”), hereby files his Response to the Motion to the Dismiss (Dkt. No. 70, the “Motion”) by Defendant Bam Trading Services Inc. d/b/a. Binance.US. (“Binance.US”).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Binance.US, along with Defendants CoinMarketCap OpCo, LLC (“CoinMarketCap.Com”) and Binance Capital Mgmt. Co., Ltd. (“Binance”), peddled a false ranking of cryptocurrencies to artificially suppress the value of HEX, a cryptocurrency that threatened the businesses and investments of Binance and Binance.US. Such a false representation of ranking in the cryptocurrency industry, which supposedly represents the relative position of a cryptocurrency by market capitalization, is in violation of the federal Commodity Exchange Act (“CEA”) and the Arizona Consumer Fraud Act (“ACFA”). This action seeks to redress the rights afforded to Plaintiff and the Class, which represents all HEX owners who sold HEX during the artificial deflation of HEX (the “Suppression Period”).

First, this Court has personal jurisdiction over Binance.US because the CEA provides an action may be brought wherein the act or transaction constituting the violation occurs. 7 U.S.C. § 25(c). Further, Binance.US also purposefully availed itself of the benefits of doing business in Arizona. Under the Ninth Circuit’s three-part test, Plaintiff has established that this Court has personal jurisdiction because: (1) Binance.US purposefully directs its activities in the forum state by operating in Arizona, which, unlike several other states, has not banned Binance.US from providing or marketing its services to Arizonians; (2) Binance.US sought and obtained licensure as a money transmitter from the Arizona Department of Financial Institutions, which allows Binance.US to sell or issue payments

1 instruments and receive money for transmission in Arizona, and (3) Binance.US,
2 which already interacts with the Arizona's legal and regulatory scheme, has not
3 proved that an unreasonable burden would exist if it had to defend itself in this
4 forum. This Court has personal jurisdiction over Binance.US.

5 Second, Plaintiff pleads claims under the CEA warranting dismissal of
6 Binance.US's Motion. Binance.US had the ability to influence market prices because
7 it knowingly directed users to false information available on CoinMarketCap.Com,
8 its subsidiary and strategic partner, which then lied to its users about HEX's
9 ranking. For example, during the Suppression Period, when other websites had
10 ranked HEX between fourth and tenth in size, CoinMarketCap.Com ranked HEX
11 at 201 – yet Binance.US directed its users to CoinMarketCap.Com for “objective”
12 information. As a result, the lies by Binance.US and CoinMarketCap.Com deflated
13 the cryptocurrency's value during the Suppression Period. Binance.US planned,
14 permitted, and authorized this scheme because HEX, a cryptocurrency designed to
15 discourage active trading with its high-yield interest rates, was a threat to
16 Binance.US's business model. In fact, the CEA's broad codification of respondeat
17 superior, and Binance.US's alter ego relationship with Binance and
18 CoinMarketCap.Com, in itself creates further liability for Binance.US under the
19 CEA. The Court should allow Plaintiff to proceed with his CEA claims against
20 Binance.US.

21 Third, Plaintiff pleads claims under the ACFA warranting dismissal of
22 Binance.US's Motion. The ACFA seeks to protect consumers within Arizona from
23 any deception or unfair act or practice. Plaintiff has alleged all the necessary
24 elements for a claim under the ACFA: (1) Binance.US misrepresented the true
25 ranking of HEX through CoinMarketCap.Com (while other websites ranked HEX
26 as between fourth and tenth in size, CoinMarketCap.Com ranked HEX at 201)
27 (2) Binance.US's misrepresentations occurred in connection with advertising itself
28 as a place to buy and sell cryptocurrency, and (3) Plaintiff occurred injury when

1 Binance.US failed to disclosure the true ranking of HEX, which he relied on to sell
 2 HEX during the Suppression Period. The Court should allow Plaintiff to proceed
 3 with his claims under the ACFA.

4 The Court should find that is has personal jurisdiction over Binance.US and
 5 allow Plaintiff and the Class to proceed with their claims under the CEA and
 6 ACFA. Plaintiff and the Class also reserve the right to amend their pleadings to
 7 address any deficiencies.

8 **II. STATEMENT OF FACTS¹**

9 *Ranking Websites Are Integral to the Cryptocurrency Industry*

10 In September 2018, Nic Carter (“Carter”), who is a partner at venture capital
 11 firm Castle Island Ventures, and co-founder of CoinMetrics.io, detailed the
 12 relationship between exchanges (a platform on which individuals can buy and sell
 13 cryptocurrency), coin ranking websites (rankings are usually based on a
 14 cryptocurrency’s relative position by its market capitalization), and retail investors
 15 (who are mainly non-professional investors). (Compl. ¶ 6.) Carter warned in his
 16 article that ranking websites:

17 [O]ccupy a fêted position in the industry. Ostensibly, they perform a
 18 useful service to investors and receive little in return aside from ad
 19 revenue. But the under-reported reality is more sinister. Rankings sites
 20 are squarely at the center of the extractive game that siphons money
 21 from retail investors and deposits it into the pockets of altcoin creators
 22 and exchange operators.

23 (*Id.* ¶ 6.) Carter further explained that:

24 Many if not most exchanges have affiliate schemes, and referral links
 25 (“reflinks”) can be a lucrative source of revenue if you are the
 26 intermediary between active traders and exchanges” and that

¹ Plaintiff asserts substantially similar Statement of Facts in his simultaneous responses to Defendants’ motions to dismiss (Dkt. Nos. 70–72.)

1 “investors go to [coin rankings] sites to find links to exchanges where
2 they can trade their coins of choice, especially if they are smaller
3 projects and do not have many points of liquidity. Since the rankings
4 sites are the ports of call for investors, they have an almost captive
5 audience and can easily monetize with an affiliate link.”

6 (*Id.* ¶ 7.)

7 *CoinMarketCap.Com Emerges as the Largest Player in the Ranking Business*

8 CoinMarketCap.Com is one of those websites that rank cryptocurrencies by
9 their market capitalization. (*Id.* ¶ 80.) CoinMarketCap.Com claims that its mission
10 is to make cryptocurrencies discoverable and efficient globally by empowering
11 retail users with unbiased, high quality, and accurate information by drawing their
12 own informed conclusions. (*Id.* ¶ 14.) In April 2020, CoinDesk, a popular news
13 website specializing in cryptocurrency, referred to CoinMarketCap.Com as the
14 “dominant data source and go-to platform for asset pricing” in the cryptocurrency
15 space as well as the “first landing page for retail investors[.]” (*Id.* ¶ 21.) Yet despite
16 its status as “the first port of call for small retail buyers” CoinDesk also noted that
17 “institutional investors [have] spurned the website, particularly after [a report of
18 misconduct on the part of CoinMarketCap.Com was made to the SEC].” (*Id.*)
19 Nonetheless, Coindesk notes that “exchanges have always used CoinMarketCap[.]”
20 (*Id.*) Today, CoinMarketCap.Com refers to itself as the world’s most-referenced
21 price-tracking website for crypto-assets. (*Id.*)

22 To highlight CoinMarketCap.Com’s powerful influence, Adel de Meyer (“de
23 Meyer”), the CEO of DAPS Coin, another cryptocurrency, said to Forbes Magazine
24 that “[a] ranking authority with the size and reputation of CoinMarketCap[.Com]
25 has the capacity to essentially ‘hide’ a [cryptocurrency] at will.” (*Id.* ¶ 22.) To “hide”
26 a cryptocurrency essentially means that CoinMarketCap.Com can manipulate the
27 ranking of a cryptocurrency and thus suppress the market for such cryptocurrency
28 (as well as its price). (*Id.* ¶ 171.)

1 The CEO also provided that CoinMarketCap.Com's dominance creates an
 2 environment ripe "for collusion, corruption, and coercion" and that
 3 CoinMarketCap.Com has reduced market caps arbitrarily, leaving "investors and
 4 traders confused" and "damaging the reputation" of some cryptocurrencies. (*Id.*
 5 ¶ 23.) De Meyer concluded that CoinMarketCap.Com's flawed rankings were
 6 "dangerous" and posed a risk to retail investors. (*Id.*)

7 *Binance Acquires CoinMarketCap.Com*

8 Binance is an exchange that allows individuals to buy and sell
 9 cryptocurrencies. (*Id.* ¶ 5.) In 2019, American regulators banned Binance from
 10 operating in the United States. (*Id.* ¶ 36.) But in response to its ban, Binance launched
 11 Binaanace.US, an exchange that would "bring the security, speed, and liquidity of
 12 Binance[] to North America," and ensure that Binance was in "full regulatory
 13 compliance" through Binance.US. (*Id.* ¶ 37.) While Binance.US offers a similar
 14 interface and feature set to its Binance counterpart, it is also banned in at least seven
 15 states in the United States. (*Id.* ¶¶ 43, 44.) In 2020, Binance acquired
 16 CoinMarketCap.Com, which is now a subsidiary of Binance. (*Id.* ¶ 17.) During the
 17 acquisition period, experts in the crypto industry opined that the acquisition was
 18 "not very good for the industry given the conflict of interest between the parties
 19 missions." (*Id.* ¶ 19.) Namely, CoinMarketCap.Com was apparently in the business
 20 of providing "unbiased, high quality, and accurate information," and Binance and
 21 Binance.US were exchanges that sought active trading. (*Id.* ¶ 14.) Today, despite its
 22 ban, Binance has a market capitalization of \$1.3 billion and the highest trading
 23 volume of any such exchange, making it the largest cryptocurrency exchange in the
 24 world. (*Id.* ¶ 26.)

25 *CoinMarketCap.Com's Lies and Claims It Provides Objective Rankings*

26 CoinMarketCap.Com provides that "it strictly follows and enforces its
 27 independent listing criteria guidelines, circulating supply calculation methods and
 28 liquidity score for how it ranks cryptoassets. Cryptoassets that wish to be listed on

CoinMarketCap should follow the guidelines in our listing policy and will be fairly and independently evaluated on their merits. CoinMarketCap's official ranking criteria is designed to eliminate any possibility of preferential treatment. CoinMarketCap will continue to present the most accurate data on cryptocurrencies to the wider public independently. Our mission at CoinMarketCap has always been to provide all our users with the most accurate and relevant information to select exchanges and tokens to invest and trade in." (*Id.* ¶ 76.)

During the Suppression Period, CoinMarketCap.Com, Along with Binance and Binance.US, Artificially Deflated the Price of HEX

CoinMarketCap.Com ranked HEX along with other cryptocurrencies based on their market capitalization. (*Id.* ¶ 80.) In 2020, HEX was the best performing cryptocurrency of 2020. (*Id.* ¶ 90.) CoinMarketCap.Com, however, ranked HEX at 201 that year and refused to adjust its rank based on HEX's performance as related to other cryptocurrencies. (*Id.*) CoinMarketCap.Com also ranked Binance Coin and Binance USD, which were issued by its parent company, Binance (meaning Binance and its principals have a financial interest in ensuring the strongest possible demand for Binance Coin and Binance USD. (*Id.* ¶¶ 99, 102, 104.) On July 21, 2021, CoinMarketCap.Com ranked Binance Coin as the fourth largest cryptocurrency and Binance USD as the tenth largest cryptocurrency. (*Id.* ¶¶ 101, 105.)

On July 21, 2021, during the Suppression Period, Nomics (another website that ranks cryptocurrencies based on their market capitalization) provided that HEX's market cap was \$85.3 billion – meaning that HEX should have been ranked third in size. (*Id.* ¶¶ 106, 107.) CoinMarketCap.Com, however, listed HEX's market cap as just over \$25.6 billion. (*Id.* ¶ 108.) Even at a market cap of just over \$25.6 billion, HEX should have been ranked sixth in size. (*Id.* ¶ 109.) But, on July 21, 2021, CoinMarketCap.Com still ranked HEX at 201 in size. (*Id.* ¶ 110.) In fact, HEX only appeared on the third page of CoinMarketCap.Com's ranking. (*Id.* ¶ 111.)

At around the same time, smaller ranking websites including Nomics, Coinranking, Yahoo Crypto, TradingView, Coinpaprika, Etherscan, and CryptoCurrencyCap all had HEX ranked between fourth and tenth in size. (*Id.* ¶ 113.) CoinMarketCap.Com’s failure to accurately rank HEX artificially suppressed HEX’s value because at least some individuals who purchased higher ranked cryptocurrencies would have purchased HEX instead. (*Id.* ¶ 115.)

Defendants Damage Plaintiff and the Class by Suppressing HEX’s Value

CoinMarketCap.Com’s failure to accurately rank HEX—and instead outright make false statements to the trading public—has artificially suppressed HEX’s value to the detriment of Plaintiff and those similarly situated. (*Id.* ¶ 114.) Plaintiff seeks to redress Defendants’ misconduct on behalf of all persons who purchased HEX prior to the Suppression Period but sold HEX during the Suppression Period. (*Id.* ¶ 146.) But for CoinMarketCap.Com’s failure to accurately rank HEX, Plaintiff and the Class would have sold their shares that were not subject to CoinMarketCap.Com’s intentional suppression. (*Id.*)

III. LEGAL STANDARD

First, the Court has personal jurisdiction over Binance.US. A plaintiff responding to a motion to dismiss for lack of personal jurisdiction need only make out a prima facie case for jurisdiction at the pleading stage; the plaintiff does not need prove jurisdiction by a “preponderance of the evidence.” *See Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1319 (9th Cir. 1998). Moreover, in a federal question case involving defendants who reside outside of the forum state, the issue of personal jurisdiction is governed by the forum state’s personal jurisdiction rules in the absence of a federal statute governing personal jurisdiction. *See Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006) (providing the standard). Under this standard, the Court has personal jurisdiction over Binance.US.

Second, the Court should allow Plaintiff and the Class to proceed into discovery with all of their claims. When reviewing a motion to dismiss for failure to state a claim, the Court must consider all factual allegations in a plaintiff's complaint as true and draw all reasonable inferences in the plaintiff's favor. Fed. R. Civ. P. 12(b)(6); *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A district court may not dismiss a complaint for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief. *Barnett v Centoni*, 31 F. 3d 813, 816 (9th Cir. 1994). The Court should allow Plaintiff and the Class to proceed with all their claims into discovery.

IV. ARGUMENT

A. THIS COURT HAS PERSONAL JURISDICTION OVER BINANCE.US BASED ON ITS CONDUCT

1. The CEA Provides Personal Jurisdiction Over Binance.US

This Court has personal jurisdiction over Binance.US because the CEA provides the action may be brought wherein the act or transaction constituting the violation occurs. 7 U.S.C. § 25(c). Minimum contacts with a particular district or state for purposes of personal jurisdiction is not a limitation imposed on the federal courts in a federal-question case by due process concerns. *Warfield v. Alaniz*, 453 F. Supp. 2d 1118, 1127-28 (D. Ariz. 2006) (finding a securities statute authorizing nationwide service of process established personal jurisdiction over defendants); *Bulgo v. Munoz*, 853 F.2d 710, 713 (9th Cir. 1988) (also holding that the district court had jurisdiction under Section 27 of the Securities Exchange Act). Thus, where a federal statute, such as 7 U.S.C. § 25(c), confers nationwide service of process, the question becomes whether the party has sufficient contacts with the United States, not any particular state. *Go-Video, Inc. v. Akai Elec. Co., Ltd.*, 885 F.2d 1406, 1414 (9th Cir. 1989) (finding personal jurisdiction may be established in any district if sufficient national contacts are found under a national service statute). There can

1 be no disputes that Binance.US has sufficient contacts with the United States, as
 2 Binance's express intent to launch Binance.US in the United States was to bring the
 3 liquidity of Binance to the United States. (Compl. ¶ 37.) This Court has personal
 4 jurisdiction over Binance.US.

5 **2. Plaintiff Has Also Established Binance.US Purposefully Directs Its**
 6 **Activities in Arizona**

7 Further, this Court has specific personal jurisdiction over Binance.US based
 8 on its conduct. In assessing whether a defendant has sufficient contract with the
 9 forum state, the Ninth Circuit employs a three-part test:

- 10 (1) The non-resident defendant *must purposefully direct its*
 11 *activities or consummate some transaction with the forum or*
 12 *resident thereof; or perform some act by which it purposefully*
 13 *avails itself of the privilege of conducting activities in the*
 14 *forum, thereby invoking the benefits and protections of its*
 15 *laws;*
 16 (2) the claim must be one which *arises out of or relates to the*
 17 *defendant's forum-related activities; and*
 18 (3) the exercise of jurisdiction must comport with *fair play*
 19 *and substantial justice, i.e. it must be reasonable.*

20 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (providing
 21 the standard). The plaintiff bears the burden of satisfying the first two requirements
 22 of the test. *Schwarzenegger*, 374 F.3d at 801-02. As set forth below, Binance.US's
 23 specific analysis fails under the Ninth Circuit's applicable test and the Court has
 24 specific jurisdiction over Binance.US.

25 First, Binance.US purposely directed its activities in Arizona. The test is
 26 satisfied when a defendant (1) commits an intentional act, (2) expressly aimed at
 27 the forum, (3) which causes foreseeable harm in the forum. *Calder v. Jones*, 465 U.S.
 28 783, 789-790 (1984) (finding it proper for a court in California to exercise jurisdiction

over Florida defendants because defendants calculated to cause injuries in California); *AMA Multimedia LLC v. Sagan Ltd.*, No. CV-16-01269-PHX-DGC, 2016 WL 5946051, at *3 (D. Ariz. Oct. 13, 2016) (citing *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1227–28 (9th Cir. 2011)). The “intentional act” prong simply requires “an intent to perform an actual, physical act . . . rather than an intent to accomplish a result or consequence of that act.” *Id.* at *3 (citing *Schwarzenegger*, 374 F.3d at 806). Binance.US committed an intentional act because it provides false statements on its website by directing users to CoinMarketCap.Com’s website. (Compl. ¶ 164.) In furtherance of its intentional act, Binance.US authorized CoinMarketCap.Com to continue to proceed on its behalf as a subsidiary and marketing channel. (*Id.* ¶ 183.) Binance.US is also responsible for ensuring that Binance’s US operations, including those of its Operator and strategic partner CoinMarketCap.Com, comply with American law. (*Id.* ¶ 204.) Binance.US committed an intentional act nor does Binance.US seriously dispute this prong.

Second, Binance.US’s intentional acts are expressly aimed at Arizona. The Supreme Court in *Calder* held that a foreign act that is both aimed at and has effect in the forum state satisfies the purposeful availment and direction prong of the specific jurisdiction analysis. *Calder*, 465 U.S. at 789–80. Since then, in addressing the “effects test,” the Ninth Circuit has recognized that not all foreign acts with foreseeable effects in the forum state give rise to specific jurisdiction. The Ninth Circuit has recognized that there must be “something more.” *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998). According to the Ninth Circuit, “‘something more’ is what the Supreme Court described as ‘express aiming’ at the forum state.” *Bancroft*, 223 F.3d at 1087 (citing *Calder*, 465 U.S. at 789). Here, Binance.US did not simply operate a website accessible to Arizonians (Motion at 14) but in fact Binance.US sought and obtained licensure as a money transmitted from the Arizona Department of Financial Institutions. (*Id.* ¶ 47.) Binance.US, moreover, has been banned in several states in the United

1 States — but Arizona is not one of the states which Binance.US has been banned. (*Id.*
 2 ¶ 44–45.) Binance.US’s acts are, undeniably, intentionally expressed at the State of
 3 Arizona.

4 Third, Binance.US has caused harm which it knows is likely to be suffered in
 5 Arizona. The foreseeable harm element is satisfied “when defendant’s intentional
 6 act has foreseeable effects in the forum.” *Bancroft, supra*, 223 F.3d at 1087 (9th Cir.
 7 2000). This element does not require that the “brunt” of the harm be suffered in the
 8 forum. *Yahoo!, supra*, 433 F.3d at 1207. In fact, this element may be established even
 9 if the bulk of the harm occurs outside the forum. *Id.* Here, Plaintiff is a resident of
 10 Arizona and was physically located in Arizona during the acquisition and sale of
 11 HEX. (*Id.* ¶¶ 9–12.) By obtaining licensure in Arizona (*Id.* ¶ 47), Binance.US knew,
 12 as Arizona was one of the states it could legally operate, that its misconduct would
 13 affect individuals like Plaintiff.

14 Binance.US has purposefully directed its activities in Arizona.

15 **3. Plaintiff’s Claims Arise Out of and Relate to Defendant’s Forum** 16 **Related Activities**

17 Plaintiff’s claims arise out of and relate to Binance.US’s forum related
 18 activities. The second required element of specific jurisdiction, whether the claim
 19 arises out of or relates to the defendant’s forum-related activities, is established “if
 20 the plaintiff ‘would not have been injured but for’ the defendant’s conduct directed
 21 at the forum.” *AMA Multimedia*, 2016 WL 5946051, at *6 (citing *Panavision Int’l. L.P.*
 22 *v. Toepfen*, 141 F.3d 1316, 1322 (9th Cir. 1998)). Here, Plaintiff’s alleged injuries
 23 directly arise from and are the result of Defendants’ publications of disparaging
 24 statements directed at Arizona and its direct contact with Arizona customers. But
 25 for that conduct, Plaintiff would not have been injured. Plaintiff has made a prima
 26 facie showing to satisfy the second required element of specific jurisdiction.

27 **4. Defendants Have Not Come Forward with Compelling Evidence** 28 **that the Exercise of Jurisdiction Would be Unreasonable**

When the plaintiff establishes the first two elements for specific jurisdiction, which Plaintiff has done here, the defendant must come forward with a “compelling case” that the exercise of jurisdiction would be unreasonable. *AMA Multimedia*, 2016 WL 5956051, at *6. Here, Binance.US fails to demonstrate that the exercise of personal jurisdiction would not comport with fair play and substantial justice. In any case, as Plaintiff has alleged, Binance.US came to this forum and sought and obtained licensure as a money transmitted from the Arizona Department of Financial Institutions. (Compl. ¶ 47.) Accordingly, it would not be an unreasonable burden on Binance.US to defend itself in this forum.

B. PLAINTIFF HAS PROPERLY ALLEGED HIS CLAIMS AGAINST BINANCE.US

1. Binance.US Violated the CEA Because It Intentionally Influenced and Caused Artificial Prices

Plaintiff has sufficiently alleged that Binance.US violated the CEA. To state a price manipulation claim, a plaintiff must allege that (1) the defendant possessed an ability to influence market prices; (2) an artificial price existed; (3) the defendant caused the artificial prices; and (4) the defendant specifically intended to cause the artificial price. *In re Commodity Exch., Inc.*, 213 F. Supp. 3d 631, 668 (S.D.N.Y. 2016). The CEA provides a private right of action against any person “who willfully aids, abets, counsels, induces, or procures the commission of a violation” of the CEA. 7 U.S.C. § 25. Furthermore, under the CEA, it is unlawful for:

Any person to *manipulate or attempt to manipulate the price of any commodity* in interstate commerce . . . or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or *other means of communication false or misleading or knowingly inaccurate reports concerning crop*

1 or market information or conditions that affect or tend to affect
2 the price of any commodity in interstate commerce[.]

3 7 U.S.C. 13(a)(2). Under the CEA, it is also “unlawful for any person, directly or
4 indirectly, to manipulate or attempt to manipulate the price of any swap, or of any
5 commodity in interstate commerce[.]” 7 U.S.C. 9(3). Plaintiff has sufficiently
6 alleged that Binance.US violated the CEA.

7 First, Plaintiff has adequately pleaded that Binance.US has the ability to
8 influence market prices. In particular, Plaintiff alleges that Binance.US directs users
9 to CoinMarketCap.Com’s website for “objective” information about the various
10 cryptocurrencies that Binance.US offers for sale. (Compl. ¶ 164.) In turn,
11 CoinMarketCap.Com provides untrue statements concerning HEX’s ranking. (*Id.*
12 ¶ 163.) By encouraging those contemplating buying or selling cryptocurrencies to
13 rely on CoinMarketCap.Com’s rankings, Binance.US possesses the ability to
14 influence market prices in the artificial manipulation of commodities. (*Id.* ¶ 181.)

15 Second, Plaintiff has pleaded that an artificial price existed. *See, e.g.,*
16 *Commodity Exch.*, 213 F. Supp. 3d at 673 (manipulation shown if trading impacts a
17 market which “relies on transaction to signal true, rather than manipulative,
18 demand” (quotation marks omitted)). CoinMarketCap.Com’s failure to accurately
19 rank HEX artificially suppressed HEX’s value. (Compl. ¶ 114.) But for
20 CoinMarketCap.Com’s failure to accurately rank HEX, at least some individuals
21 who purchased higher ranked cryptocurrencies would have purchased HEX
22 instead, suppressing the price of HEX and inflating the price of one or more other
23 cryptocurrencies. (*Id.* ¶ 115.)

24 Third, Plaintiff has pleaded that Binance.US assisted with causing the
25 artificial prices. The CEA provides a private of action against any personally “who
26 willfully aids, abets, counsels, induces, or procures the commission of a
27 violation[.]”. 7 U.S.C. § 1. Binance.US directs users to CoinMarketCap.Com’s
28 website for information about the various cryptocurrency it offers for sale, and thus

1 participated in providing false statements. (Compl. ¶ 164.) Further, Binance.US,
 2 though highly experienced in the field of cryptocurrency, authorized
 3 CoinMarketCap.Com to continue to proceed on its behalf as a subsidiary and
 4 marketing channel. (*Id.* ¶ 183.) Binance.US has assisted with causing artificial
 5 prices.

6 Fourth, Binance.US specifically intended to cause the artificial price. A
 7 defendant participates in a manipulative scheme with scienter by acting knowingly
 8 or recklessly in helping to affect the trading at issue. Specific intent to manipulate
 9 prices can be pled by alleging facts (1) showing that the defendant had both motive
 10 and opportunity to commit the fraud or (2) constituting strong circumstantial
 11 evidence of conscious misbehavior or recklessness. *Commodity Exch.*, 213 F. Supp.
 12 3d at 670 (internal quotation marks omitted). As pleaded, Binance.US was aware
 13 of issues with CoinMarketCap.Com's rankings. (Compl. ¶ 188.) Binance.US had
 14 motive because it would substantially profit through manipulating prices. HEX's
 15 success was even a threat to Binance.US's business because exchanges like
 16 Binance.US make money only when an investor trades—whereas HEX was
 17 designed to discourage active trading. (*Id.* ¶ 136.) Binance.US specifically intended
 18 to cause the artificial price.

19 Plaintiff has alleged that Binance.US violated the CEA.

20 **2. The CEA's Broad Codification of Respondeat Superior and**
 21 **Binance.US's Alter Ego Relationship with Binance and**
 22 **CoinMarketCap.Com Makes Binance.US Liable for All Violations**

23 Binance.US has strict and vicarious liability for violations of the CEA. An
 24 expansive variant of respondeat superior liability applies to violations of the CEA.
 25 *In re Amaranth Nat'l Gas Commodities Litig.*, 587 F. Supp. 2d 513, 531-32 (S.D.N.Y.
 26 2008). Agency under the CEA is premised on respondeat superior liability, and it
 27 is not necessary that the principal direct the act or have knowledge of the agents'
 28 actions. *Dohmen-Ramirez v. Commodity Futures Trading Com.*, 837 F.2d 847, 858 (9th

1 Cir. 1988) (citing, among other sources, *Cange v. Stotler & Co.*, 826 F.2d 581, 589 (7th
2 Cir. 1987)). Binance.US has strict and vicarious liability for violations of the CEA.

3 The allegations also constitute a prima facie showing of an alter ego
4 relationship, which further establishes liability, between Binance.US, Binance, and
5 CoinMarketCap.Com. To prevail and hold a parent corporation liable pursuant to
6 the alter ego theory, a plaintiff must prove both (1) unity of control and (2) that
7 observance of the corporate form would sanction a fraud or promote injustice.
8 *Gatecliff v. Great Republic Life Ins. Co.*, 170 Ariz. 34, 821 P.2d 725, 728 (1991). To
9 establish unity of control, Plaintiff must show that the parent corporation exerts
10 substantially total control over the management and activities of its subsidiary. *U-*
11 *Haul Int'l v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, No. CV-10-1047-PHX-SMM,
12 2011 WL 9111, at *3 (D. Ariz. May 3, 2016). Substantial total control may be proved
13 by a number of factors, including (1) common officers or directors; (2) failure of
14 subsidiary to maintain formalities of separate corporate existence; (3) similarity of
15 logo; and (4) plaintiff's lack of knowledge of subsidiary's separate corporate
16 existence." *Gatecliff*, 821 P.2d at 728. Plaintiff has established an alter ego
17 relationship, which further establishes liability, between Binance.US, Binance, and
18 CoinMarketCap.Com.

19 As alleged, Binance.US operates Binance for reasons including Binance.com
20 takes American users to Binance.US's website (assuming that there is a distinction
21 at all) and Binance.US provides Binance Services, as that phrase is defined in the
22 Binance Terms, in that it utilizes internet or blockchain technologies developed by
23 Binance and one or more Binance ecosystem components such as "digital asset
24 trading platforms." (Compl. ¶ 200.) In an April 2020 Forbes Magazine interview,
25 the CEO of Binance.US, Catherine Coley, stated that she reported to BAM's board
26 of directors and that the other two people on the board were Defendant Zhao and
27 Wei Zho, then Binance's CFO. (*Id.* ¶ 201.) Moreover, as a Binance Operator,
28 Binance.US is bound by the Binance Terms as well as by the terms of its supposed

1 “brand partnership” with Binance and any technology licenses with Binance. (*Id.* ¶
 2 203.) Binance.US is also responsible for ensuring that Binance’s US operations,
 3 including those of its Operator and strategic partner CoinMarketCap.Com, comply
 4 with American law. (*Id.* ¶ 204.) Binance.US has liability for violations of the CEA.

5 **3. Binance.US’s Manipulation of a Commodity Also Violates the** 6 **Arizona Consumer Fraud Act**

7 The intentional manipulation of HEX by Binance.US also violates the ACFA.
 8 To succeed on a claim of consumer fraud under ACFA, a plaintiff must show (1) a
 9 false promise or misrepresentation, (2) which is made in connection with the sale
 10 or advertisement of merchandise, and (3) consequent and proximate injury
 11 resulting from the misrepresentation. Ariz. Rev. Stat. § 44-1521 *et seq.*; *Bergdale v.*
 12 *Countrywide Bank FSB*, No. cv-12-8057-PCT-GMS, 2013 WL 105295, at *3 (D. Ariz.
 13 Jan. 9, 2013) (providing the standard). Binance.US’s manipulation of HEX violates
 14 the ACFA.

15 First, Plaintiff has alleged misrepresentations by Binance.US. For example,
 16 Binance.US directed users to CoinMarketCap.Com for “objective” information
 17 regarding the true ranking of virtual currencies offered for sale which, as discussed,
 18 provided false rankings to artificially manipulate the price of HEX. (Compl. ¶ 164.)
 19 Second, Binance.US’s misrepresentation occurred in connection the advertisement
 20 because CoinMarketCap.Com advertised Binance.US’s services as a place to buy
 21 and sell cryptocurrency and liked users who were interested in purchasing such
 22 cryptocurrency to that website. (*Id.* ¶ 227.) Third, Plaintiff incurred proximate and
 23 proximate injures in at least three ways: (1) Plaintiff received artificially suppressed
 24 prices in exchange for their units of HEX (*id.* ¶ 232); (2) Plaintiff suffered damages
 25 by Binance.US’s failure to disclosure the true ranking of HEX and the crypto
 26 currencies ranked above it (*id.* ¶ 233); and (3) Plaintiff suffered damages that he
 27 would not have sold HEX at the prices he did if he had been aware that the market

price had been artificially and falsely suppressed (*id.* ¶ 234). Binance.US has violated the ACFA by manipulating the price of HEX.

4. Binance.US Is Further Liable for Violating the ACFA Because it Controls CoinMarketCap.Com

Binance.US is further liable for violating the ACFA because it controls CoinMarketCap.Com. Both federal and Arizona securities law makes Defendant CoinMarketCap.Com's controlling persons jointly and severally liable for the violations of the Arizona Consumer Fraud Act complained herein. *See e.g.* Section 20(a) of the 1934 Act; ARS §§ 44-1999, 44-2003(A). This standard serves to inform violations of the Arizona Consumer Fraud Act. Moreover, Defendant's own authority provides that Arizona courts have considered "control person" liability under the ACFA. *See, e.g. Kingsley Capital Management, LLC v. Sly*, No. CV-10-02243-PHX-NVW, 2013 WL 3967615, at *10 (D. Ariz. Aug. 2, 2013); *In re American Southwest Mortg. Litigation*, No. CIV 89-462 TUC-RMB, CIV89-471-TUC-RMB, 1991 WL 164473, at *3-4 (D. Ariz. Aug. 14, 1991). Binance.US is liable for violating the ACFA because it controls CoinMarketCap.Com.

5. Plaintiff Reserves His Rights to Include Additional Claims Under Federal and State Antitrust Law

Upon completion of discovery, Plaintiff reserves his rights to amend the Complaint to include additional claims under federal and state antitrust law.

V. CONCLUSION

Binance.US, along with the other Defendants, intentionally lied to investors and provided inaccurate ranking of HEX, which artificially suppressed its value and damaged Plaintiff and the Class.

This Court has personal jurisdiction over Binance.US because the CEA confers nationwide service of process in federal court for federal-question cases without falling short of the requirements of due process. Further, while not necessary to show, Binance.US has purposefully availed itself of doing business in

1 Arizona. A company that has already sought and obeyed Arizona's legal and
2 regulatory scheme does not face an unreasonable burden to defend itself in this
3 forum.

4 Plaintiff and the Class, moreover, have pleaded claims under the CEA
5 warranting dismissal of Binance.US's Motion. Binance.US had the ability to
6 influence market prices by lying to retailer investors about CoinMarketCap.Com's
7 objectivity, and in fact suppressed HEX's market value. In fact, the CEA's broad
8 codification of respondeat superior, and Binance.US's alter ego relationship with
9 Binance and CoinMarketCap.Com, in itself creates further liability for Binance.US
10 under the CEA. The Court should allow Plaintiff to proceed with his CEA claims
11 against Binance.US.

12 Plaintiff and the Class, further, have pleaded claims under the ACFA
13 warranting dismissal of Binance.US's Motion. Binance.US misrepresented the true
14 ranking of HEX in connection with advertising itself as an exchange which led to
15 Plaintiff's injury. The Court should allow Plaintiff to proceed with his claims under
16 the ACFA.

17 The Court should deny Binance.US's Motion.
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1 Dated: July 22, 2022

2 By: /s/ Arno Naeckel

3 George Wentz, Jr. (admitted via *pro hac vice*)

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of July 2022, I electronically transmitted the foregoing document to the Office of the Clerk of the Court, suing CM/EFC System, for filing and for transmittal of a Notice of Electronic Filing to the CM/EFC registrants on record.

/s/ Arno Naeckel

Davillier Law Group, LLC

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